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11  
12                   **UNITED STATES DISTRICT COURT FOR THE**  
13                   **NORTHERN DISTRICT OF CALIFORNIA**  
14

15     **In re:**

16     **PG&E CORPORATION,**

17                 -and-

18     **PACIFIC GAS AND ELECTRIC  
COMPANY,**

19                 **Debtors.**

- 
- 20
- 21      Affects PG&E Corporation  
22      Affects Pacific Gas and Electric  
Company  
23      Affects both Debtors

24     *\*All papers shall be filed in the Lead Case,  
No. 19-30088 (DM).*

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Bankruptcy Case No. 3:19-bk-030088 DM

Chapter 11

(Lead Case)

(Jointly Administered)

**MOTION OF THE FIRE VICTIM  
TRUSTEE TO FILE REDACTED  
VERSIONS OF CERTAIN RETENTION  
AGREEMENTS UNTIL LITIGATION  
RELATED TO SUCH RETENTION  
AGREEMENTS IS FINALLY RESOLVED**

[No Hearing Requested]

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1           Cathy Yanni, in her capacity as the Trustee (the “**Trustee**”) of the PG&E Fire Victim Trust  
2 (the “**Trust**,” and its beneficiaries, the “**Fire Victims**”), hereby submits this motion (the “**Motion**”)  
3 pursuant to sections 105(a) and 107(b) of title 11 of the United States Code (the “**Bankruptcy Code**”),  
4 Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rule 1001-2(a) of  
5 the Bankruptcy Local Rules for the United States District Court for the Northern District of California  
6 (the “**Bankruptcy Local Rules**”) and the *Procedures for Filing Redacted or Sealed Confidential or*  
7 *Highly Sensitive Documents* adopted by the United States Bankruptcy Court for the Northern District of  
8 California (the “**Local Procedures**”), for entry of an order (i) authorizing the Trustee to file certain  
9 engagement letters more specifically described below (collectively, the “**Retention Agreements**<sup>1</sup>”) for  
10 counsel retained to pursue third-party litigation, as directed by the *Order on Motion of William B. Abrams*  
11 *Authorizing Discovery Regarding Administration of the Fire Victim Trust* [Docket No. 12682]  
12 (the “**Discovery Order**”), with redactions to certain terms, the disclosure of which would impact ongoing  
13 litigation and the resolution thereof, and to post the Retention Agreements to the Fire Victim Trust Website  
14 with the same redactions, (ii) authorizing the Trustee to file under seal unredacted copies of the Retention  
15 Agreements, and (iii) directing that the unredacted copies of the Retention Agreements provided to the  
16 Court shall remain under seal and confidential and not be made available to anyone without the consent  
17 of the Trustee or further order from the Court until such time as the litigation to which the Retention  
18 Agreements apply has been finally resolved by judgment, arbitration, mediation or otherwise. The Trustee  
19 does not object to full disclosure of the Retention Agreements once the litigation to which each of the  
20 Retention Agreements apply is finally resolved.

21           On August 23, 2022, counsel for the Trustee met and conferred with Mr. Abrams and advised him  
22 that the Trustee would seek the relief requested in the Motion. Contemporaneously with the filing of this  
23 Motion, the Trustee provided Mr. Abrams with a courtesy copy of the Motion, along with copies of the  
24 Retention Agreements, redacted as requested herein.

25           In support of the Motion, the Trustee submits the Declaration of Cathy Yanni in her capacity as  
26 Trustee of the Trust (the “**Yanni Declaration**”), filed contemporaneously herewith. A proposed form of  
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28 <sup>1</sup> The term “Retention Agreements” is used herein to refer to the D&O Retention Agreement, the BMC Retention  
Agreements, the VM Retention Agreement and the Gilbert Retention Agreement (all as defined below) collectively.

1 order granting the relief requested herein is being uploaded concurrently herewith in accordance with the  
2 Local Procedures (the “**Proposed Order**”).

## 3 MEMORANDUM OF POINTS AND AUTHORITIES

### 4 I. JURISDICTION

5       1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334,  
6 the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D.  
7 Cal.), and Bankruptcy Local Rule 5011-1(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b).  
8 Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### 9 II. BACKGROUND

10      2. On January 29, 2019 (the “**Petition Date**”), the Debtors commenced the Chapter 11 cases  
11 in the United States Bankruptcy Court for the Northern District of California (the “**Bankruptcy Court**”)  
12 to address billions of dollars of liabilities related to the 2015 Butte Fire, the 2017 North Bay Wildfires,  
13 and the 2018 Camp Fire, and to provide compensation to wildfire victims fairly and expeditiously. On  
14 June 19, 2020, the Reorganized Debtors filed the *Debtors’ and Shareholder Proponents’ Joint Chapter 11*  
15 *Plan of Reorganization Dated June 19, 2020* [Dkt. No. 8048] (as may be modified, supplemented, or  
16 amended from time to time, and together with all schedules and exhibits thereto, the “**Plan**”).<sup>2</sup> The Plan  
17 addresses the claims of approximately eighty thousand Fire Victims.

18      3. On June 20, 2020, the Bankruptcy Court entered the *Order Confirming Debtors’ and*  
19 *Shareholder Proponent’s Joint Chapter 11 Plan of Reorganization Dated June 19, 2020* [Dkt. No. 8053]  
20 (the “**Confirmation Order**”) and the Effective Date of the Plan occurred on July 1, 2020. Pursuant to the  
21 Confirmation Order, on the Effective Date, the Trustee was appointed, and the Trust was established under  
22 the Trust Agreement and funded with cash, PG&E Stock and Assigned Rights and Causes of Action. The  
23 Fire Victim Trust has at all times since its inception complied with its disclosure obligations to Fire  
24 Victims and this Court.

25      4. On May 23, 2022, claimant William B. Abrams filed his *Motion of William B. Abrams*  
26 *Pursuant to Federal Rule of Bankruptcy Procedure 2004 for Entry of an Order Authorizing Discovery*  
27 *and Hearings Regarding the Administration of The Fire Victim Trust* [Dkt. No. 12440] (the “**Discovery**

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28 2 Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

1 **Motion”**). On June 7, 2022, the parties presented arguments to the Court on the Discovery Motion. On  
2 June 21, 2022, the Trustee filed the *Objection of Fire Victim Trustee to Motion of William B. Abrams*  
3 *Pursuant to Federal Rule of Bankruptcy Procedure 2004 for Entry of an Order Authorizing Discovery*  
4 *and Hearings Regarding the Administration of The Fire Victim Trust* [Dkt. No. 12527] (the “**Objection5 On July 6, 2022, Mr. Abrams filed the *William B. Abrams Reply to the Objection of Fire Victim Trustee*  
6 *Pursuant to Federal Rule of Bankruptcy Procedure 2004 for Entry of an Order Authorizing Discovery*  
7 *and Hearings Regarding the Administration of The Fire Victim Trust* [Dkt. No. 12593] (the “**Reply****

8 5. After considering the Discovery Motion, the Objection, the Reply and the arguments  
9 presented to the Court at the June 7, 2022 hearing, the Court entered the Discovery Order. The Discovery  
10 Order directed the Trust to post a copy of the retention agreement pertaining to each third-party litigation  
11 firm retained by the Trust through the “request for proposal” interview process described in the Objection.  
12 The Discovery Order explicitly recognizes “the need for confidentiality that would seem necessary to  
13 protect the interests of the Trust and would likely aid potential defendants if disclosed,” and it therefore  
14 authorizes the Trustee, if appropriate, to seek limits on the disclosure required of the Trustee to those  
15 Assigned Claims that have been “finally resolved by judgment, arbitration, mediation or otherwise.”  
16 [Docket No. 12682 10:24 – 11:17].

17 **III. THE ASSIGNED RIGHTS AND CAUSES OF ACTION**

18 6. The Assigned Rights and Causes of Action can be broken into two subsets: the potential  
19 claims against certain former officers and directors of the Reorganized Debtors for breach of fiduciary  
20 duty, corporate waste and other duty claims formerly held by the Reorganized Debtors and assertible  
21 against its former officers and directors (the “**D&O Claims22 party contractors who were engaged by the Reorganized Debtors to provide business consulting, asset  
23 management and/or vegetation management services who may, as a result of their contracts or acts or  
24 omissions be liable to the Reorganized Debtors for wildfire-related damages (the “**Third-Party Claims25 The Third-Party Claims can be further divided into two subcategories: (1) potential claims against  
26 business management consultants (the “**BMC Claims27 management contractors (the “**VM Claims********

1       7. Once the Trust became operational, it issued a press release seeking proposals for legal  
2 services to be provided in connection with the Assigned Rights and Causes of Action. The following press  
3 release was posted to the Fire Victim Trust website and issued via BusinessWire on September 18, 2020:

**PG&E Fire Victim Trust Requesting Proposals for Legal Services in Connection with Assigned Claims**

The Fire Victim Trust is requesting proposals from experienced legal practitioners to provide legal services to the Trust in connection with the Trust's analysis and pursuit of certain claims and causes of action formerly held by PG&E, now assigned to the Trust, relating to certain Northern California wildfires of 2017 and 2018. The claims and causes of action include those against former directors and officers of PG&E and those against contractors and consultants of PG&E. Copies of the Requests for Proposals may be obtained by sending an email requesting them to [FVT-RFP@brownrudnick.com](mailto:FVT-RFP@brownrudnick.com). The deadline for delivery of responses is the close of business on October 6, 2020.

10        8. The Requests for Proposals (“RFPs”) were made available upon request as directed in the  
11 press release. Law firms that requested RFPs received an RFP for D&O Claims and an RFP for Third-  
12 Party Claims. As of the October 6, 2020 deadline, a total of 12 law firms had requested and were provided  
13 with copies of the RFPs. The Third-Party RFPs permitted bidders to respond with a proposal regarding  
14 all Third-Party Claims, or with a proposal limited to either BMC Claims or VM Claims.

#### IV. RETAINED COUNSEL AND ENGAGEMENT LETTERS

16        9. By the October 6, 2020 deadline, the Trust had received four proposals from law firms (or  
17 consortiums of law firms) to represent the Trust in connection with some or all of the Assigned Claims,  
18 and one information request, as follows:

- A proposal from a consortium of law firms consisting of (i) Cotchett, Pitre & McCarthy LLP; (ii) Corey, Luzaich, De Ghetaldi & Riddle LLP; (iii) Dreyer Babich Buccola Wood Campora LLP; (iv) Walkup, Melodia, Kelly & Schoenberger; and (v) Bottini & Bottini Inc., to represent the Trust in connection with the D&O Claims.
  - A proposal from a consortium of law firms consisting of (i) Cotchett, Pitre & McCarthy LLP; (ii) Corey Luzaich, de Ghetaldi & Riddle, LLP; (iii) Dreyer, Babich, Buccola, Wood Campora LLP; and (iv) Walkup, Melodia, Kelly & Schoenberger, to represent the Trust in connection with the VM Claims.
  - A proposal from Andrews & Thornton, a Law Corporation, to represent the Trust in connection with all Third-Party Claims.
  - A proposal from Gilbert LLP to act as special insurance counsel to the Trust in connection with the D&O Claims and the Third-Party Claims.
  - An information request from a consortium of law firms consisting of (i) Berman Tabacco and (ii) Schubert Jonckheer & Kolbe LLP, indicating interest in responding to the RFP pertaining to the D&O Claims and requesting additional information (to which the Trust responded).

1       10. After reviewing and considering all of the proposals received by the Trust, the Trustee  
2 selected and retained (A) a consortium of law firms (the “**D&O Firms**”) consisting of (i) Cotchett, Pitre  
3 & McCarthy LLP; (ii) Corey, Luzaich, De Ghetaldi & Riddle LLP; (iii) Dreyer Babich Buccola Wood  
4 Campora LLP; (iv) Walkup, Melodia, Kelly & Schoenberger; and (v) Bottini & Bottini Inc., to represent  
5 the Trust in connection with the D&O Claims; (B) a consortium of law firms (the “**BMC Firms**”)  
6 consisting of (i) Andrews & Thornton, a Law Corporation, and (ii) Greenberg Gross LLP to represent the  
7 Trust in connection with the BMC Claims; and (C) a consortium of law firms (the “**VM Firms**”) consisting  
8 of (i) Cotchett, Pitre & McCarthy, LLP, (ii) Corey, Luzaich, de Ghetaldi & Riddle, LLP, (iii) Walkup,  
9 Melodia, Kelly & Schoenberger, (iv) Dreyer, Babich, Buccola, Wood & Campora, LLP, (v) Andrews &  
10 Thornton, a Law Corporation, and (vi) Greenberg Gross LLP to represent the Trust in connections with  
11 the VM Claims.

12       11. To confirm the retention of the firms described above, the Trustee entered into certain  
13 engagement letters as follows: an engagement letter dated October 16, 2020 between the Trustee and the  
14 D&O Firms (the “**D&O Retention Agreement**”); an engagement letter dated December 18, 2020 between  
15 the Trustee and the BMC Firms (the “**Original BMC Retention Agreement**”); an engagement letter dated  
16 January 27, 2021 between the Trustee and the VM Firms (the “**VM Retention Agreement**”); an engagement letter dated  
17 March 11, 2021 between the Trustee and Gilbert LLP, as special insurance  
18 counsel in connection with the BMC Claims (the “**Gilbert BMC Retention Agreement**”); and an  
19 engagement letter dated March 11, 2021 between the Trustee and Gilbert LLP, as special insurance  
20 counsel in connection with the VM Claims (the “**Gilbert VM Retention Agreement**,” and together with  
21 the Gilbert BMC Engagement Letter, the “**Gilbert Retention Agreements**”).

22       12. To memorialize certain subsequent litigation strategy decisions, the parties to the Original  
23 BMC Engagement Letter entered into five new engagement letters dated January 1, 2022 (the “**Amended**  
24 **BMC Retention Agreements**”) that collectively terminated the Original BMC Retention Agreement and  
25 superseded its terms. To memorialize an additional litigation strategy decision, the parties to the Amended  
26 BMC Retention Agreements entered into an updated engagement letter dated July 1, 2022 (the “**Second**  
27 **Amended BMC Retention Agreement**, and together with the Original BMC Retention Agreement and  
28

1 the Amended BMC Retention Agreement, the “**BMC Retention Agreements**”) that terminated one of the  
2 five Amended BMC Retention Agreements and superseded its terms

3       13. The D&O Retention Agreement contains certain highly confidential information  
4 (the “**D&O Sensitive Information**”) that could be used to benefit the defendants to the D&O Claims  
5 (the “**D&O Defendants**”), the BMC Defendants (as defined below) and the VM Defendants (as defined  
6 below) to the detriment of the Fire Victim Trust. Specifically, the information that the Trustee seeks to  
7 redact temporarily from the D&O Retention Agreement describes the Trust’s liability insurance coverage,  
8 which could be valuable to the D&O Defendants, the BMC Defendants and the VM Defendants in their  
9 defense of the litigation. Disclosing the D&O Sensitive Information would therefore be prejudicial to the  
10 Trust and to its beneficiaries, the fire victims. The Trustee and the D&O Firms do not believe that the  
11 temporary redaction of the D&O Sensitive Information would result in a lack of transparency regarding  
12 the retention of the D&O Firms. Importantly, the Trustee and the D&O Firms believe that publication of  
13 the D&O Sensitive Information at the present time would be detrimental to the Trust. Therefore, to protect  
14 the Trust and its beneficiaries, the Trustee requests that the Court allow the Trust to temporarily redact  
15 from the D&O Retention Agreement the D&O Sensitive Information prior to filing the D&O Retention  
16 Agreement on the docket for these cases and posting them to the Fire Victim Trust Website as directed in  
17 the Discovery Order.

18       14. Similarly, the BMC Retention Agreements contain certain highly confidential information  
19 (the “**BMC Sensitive Information**”) that could be used to benefit the potential defendants to the BMC  
20 Claims (the “**BMC Defendants**”) to the detriment of the Fire Victim Trust. Specifically, the information  
21 that the Trustee seeks to redact temporarily from the BMC Retention Agreements would identify issues  
22 believed by counsel to be confidential and sensitive to the litigation and give the BMC Defendants further  
23 information that would be valuable to the BMC Defendants in their defense of the litigation. Additionally,  
24 the BMC Sensitive Information includes attorney-client privileged communications and deliberations  
25 between the BMC Firms and the Trustee. Disclosing the BMC Sensitive Information would therefore be  
26 prejudicial to the Trust and to its beneficiaries, the fire victims. The Trustee and the BMC Firms do not  
27 believe that the temporary redaction of the BMC Sensitive Information would result in a lack of  
28 transparency regarding the retention of the BMC Firms. Importantly, the Trustee and the BMC Firms

1 believe that publication of the BMC Sensitive Information would be detrimental to the Trust at this time.  
2 Therefore, to protect the Trust and its beneficiaries, the Trustee requests that the Court allow the Trust to  
3 temporarily redact from the BMC Retention Agreements the BMC Sensitive Information prior to filing  
4 the BMC Retention Agreements on the docket for these cases and posting them to the Fire Victim Trust  
5 Website as directed in the Discovery Order.

6       15. The VM Retention Agreement also contains certain highly confidential information  
7 (the “**VM Sensitive Information**”) that could be used to benefit the defendants to the VM Claims  
8 (the “**VM Defendants**”) to the detriment of the Fire Victim Trust. Specifically, the information that the  
9 Trustee seeks to redact temporarily from the VM Retention Agreement would identify issues believed by  
10 counsel to be confidential and sensitive to the litigation and give the VM Defendants further information  
11 that would be valuable to the VM Defendants in their defense of the litigation. Additionally, the VM  
12 Sensitive Information includes attorney-client privileged communications and deliberations between the  
13 VM Firms and the Trustee. Disclosing the VM Sensitive Information would therefore be prejudicial to  
14 the Trust and to its beneficiaries, the fire victims. The Trustee and the VM Firms do not believe that the  
15 temporary redaction of the VM Sensitive Information would result in a lack of transparency regarding the  
16 retention of the VM Firms. Importantly, the Trustee and the VM Firms believe that publication of the  
17 VM Sensitive Information at the present time would be detrimental to the Trust. Therefore, to protect the  
18 Trust and its beneficiaries, the Trustee requests that the Court allow the Trust to temporarily redact from  
19 the VM Retention Agreement the VM Sensitive Information prior to filing the VM Retention Agreement  
20 on the docket for these cases and posting them to the Fire Victim Trust Website as directed in the  
21 Discovery Order.

22       16. The Gilbert Retention Agreements contain certain highly confidential information  
23 (the “**Gilbert Sensitive Information**”) that could be used to benefit the D&O Defendants, the BMC  
24 Defendants and the VM Defendants to the detriment of the Fire Victim Trust. Specifically, the information  
25 that the Trustee seeks to redact temporarily from the Gilbert Retention Agreements describes the Trust’s  
26 liability insurance coverage, which could be valuable to the D&O Defendants, the BMC Defendants and  
27 the VM Defendants in their defense of the litigation. Disclosing the Gilbert Sensitive Information would  
28 therefore be prejudicial to the Trust and to its beneficiaries, the fire victims. The Trustee and Gilbert do

1 not believe that the temporary redaction of the Gilbert Sensitive Information would result in a lack of  
2 transparency regarding the retention of Gilbert. Importantly, the Trustee and Gilbert believe that  
3 publication of the Gilbert Sensitive Information at the present time would be detrimental to the Trust.  
4 Therefore, to protect the Trust and its beneficiaries, the Trustee requests that the Court allow the Trust to  
5 temporarily redact from the Gilbert Retention Agreements the Gilbert Sensitive Information prior to filing  
6 the Gilbert Retention Agreements on the docket for these cases and posting them to the Fire Victim Trust  
7 Website as directed in the Discovery Order.

8 **V. BASIS FOR RELIEF REQUESTED**

9 17. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order . . . that is  
10 necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 107(b)  
11 provides:

12 On request of a party in interest, the bankruptcy court *shall*, and on the bankruptcy  
13 court’s own motion, the bankruptcy court may—

14 (1) Protect any entity with respect to a trade secret or *confidential* research,  
development, or commercial information.

15 11 U.S.C. § 107(b) (emphasis added).

16 18. Courts have emphasized that once the court determines that the information falls within  
17 one of the enumerated 107(b) categories, the court “is *required* to protect [the movant] and has no  
18 discretion to deny the application.” *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994). Unlike its  
19 civil procedure counterpart, Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the  
20 Bankruptcy Code does not require the movant to demonstrate “good cause.” *Orion Pictures Corp.*, 21 F.3d  
21 at 28. Indeed, under section 107(b) the movant need only show “that the information it [seeks] to seal [is]  
22 ‘confidential’ and ‘commercial’ in nature.” *Id.* at 27. Commercial information is broadly defined to  
23 include information that could have a “chilling effect on [business] negotiations.” *See In re Borders Grp.,*  
24 *Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011) (quoting *In re Lomas Fin. Corp.*, No. 90 Civ. 7827 (LLS),  
25 1991 WL 21231, at \*2 (S.D.N.Y. Feb. 11, 1991)). Significantly, commercial information need not rise to  
26 the level of a trade secret to warrant section 107(b)’s protection. *See Orion Pictures Corp.*, 21 F.3d at 28  
27 (finding that “§ 107(b) is carefully drafted to avoid merging ‘trade secrets’ with ‘confidential commercial  
28 information’”).

1       19. The Bankruptcy Rules similarly authorize the Court to “make any order which justice  
2 requires (1) to protect the estate or any entity in respect of a trade secret or other *confidential* research,  
3 development, or *commercial information.*” Fed. R. Bankr. P. 9018 (emphasis added), *see also In re Global*  
4 *Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (“[T]he whole point of [Bankruptcy Rule 9018]  
5 is to protect business entities from disclosure of information that could reasonably be expected to cause  
6 the entity commercial injury”).

7       20. Both the Bankruptcy Code section 107(b) and Bankruptcy Rule 9018 allow the court  
8 to protect from disclosure information where confidentiality is necessary. This protection extends to  
9 sealing retention applications and fee applications to protect a trustee’s litigation strategy involving his  
10 investigation of claims against a debtor’s former principals and third parties. *See In re Pasquinelli*  
11 *Homebuilding, LLC*, No. 11 B 14829, 2013 WL 594459, at \*1 (Bankr. N.D. Ill. Feb. 14, 2013) (granting  
12 a motion to seal where a trustee asserted that disclosure of a consultant’s name, the terms of the  
13 engagement and the details of the consultant’s work could reveal confidential and sensitive information  
14 regarding the litigation strategy would be employed in the litigation).

15       21. In these Chapter 11 Cases, the Court has authorized the filing under seal of sensitive  
16 information in numerous instances. *See, e.g.*, Docket Nos. 286 (authorizing filing under seal of DIP  
17 Financing Fee Letters), 1241 (authorizing filing redacted contracts with Quanta Energy Services), 7605  
18 (authorizing the filing under seal of certain Exit Financing Fee Letters), 10626 ( authorizing the sealing  
19 and redaction of documents filed in support of the *Reorganized Debtors’ Objection to Consolidated*  
20 *Edison, Inc.’s Amended Cure Payment Claim Demand* and partial redaction of that objection itself), 10828  
21 (authorizing the sealing and redaction of memorandum of law filed in support of the *Reorganized Debtors’*  
22 *Objection to Consolidated Edison, Inc.’s Amended Cure Payment Claim Demand*), and, particularly  
23 relevant to this request, 10914 (authorizing the sealing and redaction of documents the Court ordered the  
24 Trustee to file and post to the Fire Victim Trust Website to provide transparency with respect to the PG&E  
25 Fire Victim Trust Share Exchange and Tax Matters Agreement dated as of July 8, 2021).

26       22. Here, the Retention Agreements themselves are privileged under California law and  
27 contain the type of confidential client information that attorneys are required by statute to protect from  
28 public disclosure. *See Cal. Bus. & Prof. Code § 6149* (West 2022) (making an attorney client fee

1 agreement a confidential communication). *See also Cortina v. Goya Foods, Inc.*, No. 14cv169 L, 2015  
2 WL 11251806 (S.D. Cal. Oct. 7, 2015) (denying Goya's motion to compel disclosure of engagement and  
3 retainer agreement); *Dietz v. Meisenheimer & Herron*, 99 Cal. Rptr. 3d 464 (Cal. Ct. 2009) (discussing  
4 attorney-client privilege and noting that, along with oral and written statement, actions, signs, or other  
5 means of communicating information are encompassed by attorney-client privilege under California law);  
6 *Jensen v. BMW of North America, LLC*, No. 18cv103-WQH, 2019 WL 3306297 (S.D. Cal. Jul. 23, 2019)  
7 (denying request to compel the retainer agreement on privilege grounds); *Whitaker v. MZM Fakhouri,*  
8 Inc., No. 5:21-cv-03327, 2021 WL 6621063 (N.D. Cal Dec. 6, 2021) (noting that the California Supreme  
9 Court has held that, when a legal matter remains pending and active, attorney-client privilege  
10 encompasses everything in an invoice, including the amount of aggregate fees because the invoice could  
11 reveal investigative efforts and trial strategy). Further, the information the Trust seeks to redact from the  
12 Retention Agreements is commercially sensitive, because, if disclosed, it would provide information that  
13 would be valuable to the defendants (and their counsel) in their defense of pending litigation and would  
14 therefore be prejudicial to the Trust and fire victims.

15       23.     Further, as noted in the background section, above, the Discovery Order itself explicitly  
16 recognizes “the need for confidentiality that would seem necessary to protect the interests of the Trust and  
17 would likely aid potential defendants if disclosed” and therefore limits the disclosure required of the  
18 Trustee to those Assigned Claims that have been “finally resolved by judgment, arbitration, mediation or  
19 otherwise.” [Docket No. 12682 10:24 – 11:6]. As the Yanni Declaration explains, the Retention  
20 Agreements fall within this need for confidentiality as they provide sensitive financial arrangements and  
21 disclosures between the Trust and counsel regarding ongoing litigation that could be used by the D&O  
22 Defendants, the BMC Defendants and the VM Defendants in their defense of the litigations.

23       24.     Finally, the Local Procedures require that a request for seal be narrowly tailored to sealable  
24 materials. The Trust and its professionals have undertaken to redact only material they believe to be  
25 confidential commercial information and will follow the Court’s procedures to provide unredacted copies  
26 to the Court, filed under seal, so the Court may conduct its own review of the confidential materials *in*  
27 *camera*. *See In re Las Vegas Monorail Co.*, 458 B.R. 553, 559 (Bankr. D. Nev. 2011) (privileged  
28 information redacted from professionals’ fee application could be filed under seal so bankruptcy court

1 could uphold its duty to review fees). Further, the Trust intends to post on the Fire Victim Trust website  
2 and file on the docket unredacted copies of the subject engagement letters when the litigation to which  
3 each applies is finally resolved.

4       25. For the reasons set forth herein, this Court should grant the Trustee's request to redact the  
5 Retention Agreements as appropriate prior to filing the Retention Agreements with the Bankruptcy Court  
6 or posting it to the Fire Victim Trust Website.

7 | VI. NOTICE

8       26. Notice of this Motion will be provided to (i) William B. Abrams; (ii) the Office of the  
9       United States Trustee for Region 17 (Attn: Andrew R. Vara, Esq. and Timothy Laffredi, Esq.); (iii) the  
10      Securities and Exchange Commission; (iv) the Internal Revenue Service; (v) the Office of the California  
11      Attorney General; (vi) the California Public Utilities Commission; (vii) the Nuclear Regulatory  
12      Commission; (viii) the Federal Energy Regulatory Commission; (ix) the Office of the United States  
13      Attorney for the Northern District of California; and (x) those persons who have formally appeared in  
14      these Chapter 11 Cases and requested service pursuant to Bankruptcy Rule 2002. The Trustee respectfully  
15      submits that no further notice is required.

16        27. No previous request for the relief sought herein has been made by the Trustee to this or any  
17 other court.

18 WHEREFORE the Trustee respectfully requests entry of an order granting the relief requested  
19 herein and such other and further relief as the Court may deem just and appropriate.

20 | DATED: August 24, 2022

BROWN RUDNICK LLP

/s/ Eric R. Goodman

Eric R. Goodman

Eric R. Goodman (admitted pro  
David J. Molton (SBN 262075)

Joel S. Miliband (SBN 77438)

## Attorneys for the Fire Victim